Filed 6/3/19 In re S.M. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.M., a Person Coming Under the Juvenile Court Law.	B290066 (Los Angeles County Super. Ct. No. DK24121)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.B, Defendant and Appellant; S.M., Objector and Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Michael E. Whitaker, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Christopher Blake, under appointment by the Court of Appeal, for Objector and Respondent.

B.B. appeals from a juvenile court's order dismissing him from S.M.'s Welfare and Institutions Code section 300 dependency proceeding after that court found that there was insufficient evidence that he was S.M.'s presumed father. He claims that an Orange County family court's previous grant of joint legal custody to him and N.M. (S.M.'s mother), with parenting time to him as S.M.'s father, implied a finding that he was a presumed father under Family Code section 7611, subdivision (d). He therefore argues that the Los Angeles County juvenile court erroneously failed to infer from that grant, and applicable statutes and rules, that he was a presumed father under that subdivision. We conclude the claim is without merit. He also claims the juvenile court erroneously failed to obtain a valid waiver of his right to counsel. We reject that claim and affirm the order.

DISCUSSION

I. B.B.'s Claim Concerning the Family Court Order Is Without Merit

The parties discuss in their statements of fact in their opening briefs a panoply of alleged events involving B.B., N.M.,

and S.M., and occurring from 2016 to 2018. However, the relevant temporal scope of pertinent facts in this case is more narrow. B.B.'s reply brief states "it is necessary to clarify *the* legal basis for B.B.'s presumed father claim. He asserts that because the Orange County family law court *granted him joint legal custody and parenting time*, it must have found him to be the child's presumed father. . . . Because B.B. did not marry the mother or sign a voluntary declaration of paternity, this finding necessarily involved application of Family Code section 7611, subdivision (d), which allows a man to obtain presumed father status if he 'receives the child into his . . . home and openly holds out the child as his . . . natural child.' (Fam. Code, § 7611, subd. (d))." (Italics added.) B.B. asserts that "statutory and rule authority[1] required the juvenile court to credit this prior [presumably, the Orange County court's ostensible] application of Family Code section 7611, subdivision (d)."

Thus, B.B. is claiming that the family court's statement, reflected in its *May 9, 2017* minute order, that the "[c]ourt grants joint legal custody with physical/primary residence to Mother, with parenting time to Father" implied a finding that B.B. was a presumed father under Family Code section 7611, subdivision (d). He argues that, as a result, the juvenile court erroneously "declined to infer[2] from [the May 9, 2017 and July 5, 2017 minute] orders a prior determination of parentage."

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[1] B.B. refers to Family Code section 7636, Welfare and Institutions Code section 316.2, subdivision (a)(1), and California Rules of Court, rules 5.635(d)(1) and (4), and (e), which we discuss *post*.

[2] B.B. states he is "not [relying] on the doctrine of collateral estoppel." He also states that the family court's alleged

A. *Pertinent Facts*

1. *The August 1, 2017 Petition and Related Proceedings*

a. *The August 1, 2017 Petition and Detention Report*

On August 1, 2017, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 dependency petition. The petition alleged, inter alia, that S.M. came within the jurisdiction of the juvenile court under section 300, subdivisions (a) (child suffered or will suffer serious physical harm from parent) and (b)(1) (child suffered or will suffer serious physical harm from parent's failure to supervise or to provide care). The petition also alleged that B.B. and N.M. were S.M.'s father and mother, respectively. On August 1, 2017, DCFS also filed a detention report reflecting that S.M. was born in April 2017.

b. *The August 1, 2017 Detention Hearing*

At S.M.'s August 1, 2017 detention hearing in juvenile court, B.B., represented by counsel, filed a form JV-505 statement regarding parentage. In it, B.B. checked a box indicating, "I believe I am the child's parent and request that the court enter a judgment of parentage." B.B. left unchecked the next set of boxes entitled, "I have already established parentage of the child by (*if known*): [¶] . . . [¶] A court judgment of parentage on (*date*): [blank line] in (*county*): [blank line]." B.B. checked a box indicating, "I believe I am the parent of the child

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"presumed father finding" reflected in the May 9, 2017 minute order "was not part of a final judgment."

and request that the court find that I am the presumed parent of the child." The parentage statement also said, "To the alleged parent of the child. [¶] . . . [¶] If you want the court to decide if you are the child's parent, fill out this form."

During the detention hearing, the court stated, inter alia, "With respect to parentage, the court has reviewed the JV-505 [form] and the parentage questionnaire. At this point in time, there's no factual dispute as to the applicability of [section] 7611[, subdivision] (d) of the Family Code. So the court is going to defer parentage finding until further evidence can be presented on the issue." Counsel for DCFS and B.B. indicated they did not wish to be heard. After the court asked if anyone wished to be heard regarding "detention and visitation," B.B.'s counsel represented that there was a pending Orange County family court case, filed by B.B., in which he was "trying to obtain custody and protect his daughter."

The court later asked B.B.'s counsel if she had documents from that case. She indicated she had a document filed on July 5, 2017, in Orange County Superior Court in case No. 17P000264. The court asked to see the document and B.B.'s counsel indicated she was providing it to the court.

The augmented record contains the above document, which is a July 5, 2017 minute order from the Orange County family court.[3] The order reflects as follows: the matter was a parentage case in which B.B. was the petitioner and N.M. was the respondent. In May 2017, B.B. filed a "[request for an order] –

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[3] In September 2018, we granted B.B.'s request to augment the record with the May 9, 2017 and July 5, 2017 minute orders in the family court case.

modification custody/visitation/support." On July 5, 2017, both parties testified at a closed hearing, the court ordered a full child custody evaluation, and the court appointed a child custody evaluator.

The record does not contain a reporter's transcript of the July 5, 2017 family court proceedings; however, a court reporter was present.[4]

At the conclusion of the detention hearing, the court ordered S.M. detained in suitable placement. The court asked its judicial assistant to make a copy of the "family law pleading" for the court's file. B.B.'s counsel never stated during the August 1, 2017 hearing that a judgment or order determining paternity or parentage had been entered in the family court case. On August 1, 2017, and at all court proceedings mentioned below, the same judge presided in juvenile court.

2. *The August 21, 2017 First Amended Petition, and the August 28, 2017 Jurisdiction and Disposition Report*

On August 21, 2017, DCFS filed a first amended petition. On August 28, 2017, DCFS filed a jurisdiction and disposition report. The report referenced an order in the family court case, and later stated, "The Court is respectfully referred to attached Superior Court of California/Orange County minute order dated 05/09/2017."

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[4] The August 1, 2017 minute order in the present case reflects that the juvenile court ordered its clerk to contact the family court and advise it of the extant dependency case and the juvenile court's dependency jurisdiction.

That minute order is not attached to the report contained in the record in this appeal. However, the augmented record contains the May 9, 2017 minute order in the family court case. The order reflects as follows: the matter was a parentage case in which B.B. was the petitioner and N.M. was the respondent. On April 10, 2017, B.B. filed a "[request for an order] – custody/visitation." On May 9, 2017, both parties were sworn and discussions ensued. The court ordered that, at specified times, "Father is permitted to go to Mother's church/residence and visit" with S.M., and "Father is also permitted to visit child on Sundays at Mother's church." The minute order also states, "Court grants joint legal custody with physical/primary residence to Mother, with parenting time to Father." The record does not contain a reporter's transcript of the May 9, 2017 proceedings; however, a court reporter was present.

3. *The October 18, 2017 and January 16, 2018 Adjudication Hearings*

On October 18, 2017, the court called the case for adjudication. The court stated it had read and considered the DCFS report. The court continued the hearing. At the January 16, 2018 adjudication hearing, the court ordered that B.B. undergo DNA testing to determine paternity.

4. *The March 15, 2018 DNA Results and Juvenile Court Finding that B.B. Was Not a Presumed Father, and S.M.'s Subsequent Plea*

On March 15, 2018, a laboratory filed a report reflecting that results from the DNA testing indicated that B.B. was not the biological father of S.M. At the March 15, 2018 trial setting

conference, B.B. represented himself. On the basis of the DNA results, the court found that B.B. was neither a biological father nor a presumed father of S.M. Concerning the latter finding, the court stated, "based on the parentage questionnaire and [B.B.'s] JV-505 form, the court does not find that there is a factual or evidentiary basis to find him to be a presumed father under [section] 7611[, subdivision] (d) of the Family Code or based on a voluntary declaration of paternity. So the court is going to, at this time, find that there's no parental relationship between [B.B.] and the minor child."

B.B. then made unsworn statements supporting his claim that he was S.M.'s father, as follows: B.B. was shocked by the DNA results. N.M. had always told him that he was the father. B.B. had visited S.M. numerous times, and had protected, bonded with, and loved her. Removing B.B. from S.M.'s life would be terrible for her.

The court asked if B.B. had any other evidence to support a finding that he was a presumed father for S.M. B.B. said the following: B.B. bought clothes for, and tried to help with, S.M. He was considered the father; an Orange County family court judge had given B.B. and N.M. joint custody. In connection with that case, B.B. and N.M. had said that he was the father, and, according to B.B., "Right there I became the father."

The court asked if B.B. had documents from the family court indicating that it had found that he was a parent of S.M. B.B. replied, "Yeah, I got joint legal custody." After the court's repeated requests for documentary evidence, B.B. said he had minute orders that referred to him as the "father" and that did not say "presumed" or "alleged."

The court replied, "But that doesn't help this court in terms of what legal status the Orange County Superior Court granted to you with respect to this child. I don't know if it's just a generic 'This is the father,' based on the mother's position at that point in time that you were the biological father, [although] we now know that you are not the biological father. So I don't know what the basis of that determination was . . . . So that's why I'm asking you, sir, if there's any information you want me to consider, I will." The court added that it was not preventing B.B. from providing that information to the court, and the court wanted to know what information B.B. had that day to show that the court might be in error in not finding B.B. to be a parent.

The court later said the law required certain evidence and facts to support a finding that B.B. was a presumed father, and the court lacked a factual or evidentiary basis to support such a finding. B.B. referred to the fact that he had been given joint custody, but the court stated, "I don't know what the Orange County Superior Court did other than what you're telling me, which is not giving me clarity in terms of what that court did." The court later observed "there [were] questions regarding what was set forth in your statement, as well as mother's parentage questionnaire, as to whether or not there would be a factual legal basis to find you to be a presumed father." N.M.'s parentage questionnaire is not part of the record.

B.B. asked if the "305" (*sic*) form he signed was pertinent, and the court replied, "your JV-505 form does not provide me with the . . . factual evidentiary basis to declare you to be a presumed father."

S.M. opposed a finding that B.B. was a presumed father. S.M.'s counsel averred that when B.B. was represented by

counsel, B.B.'s counsel provided to S.M.'s counsel copies of the May 9 and July 5, 2017 minute orders from the Orange County Superior Court. S.M.'s counsel indicated she could show them to counsel[5] if it would be helpful. B.B. acknowledged he had copies. S.M.'s counsel said she could show them to the court and counsel, adding, "They do not state that [B.B.]'s the presumed father or make any parentage findings. They're about visitation. There's nothing in these that show a parentage finding."

The court stated, "If there's no objection, I will take a look at them." B.B. replied, "Please." N.M.'s counsel indicated he wished to see the documents. The court later asked S.M.'s counsel to show to everyone what she had "before I see it"; S.M.'s counsel responded, "Yes." B.B. said he had obtained them, brought them, and had "had them stamped and sealed." The court said it would give everyone an opportunity to be heard. DCFS's counsel acknowledged she had copies.

S.M.'s counsel then asked, "Do you need it? May I approach?" The court stated, "Yes. So the court has two minute orders from the County of Orange Superior Court. One dated May 9, 2017; the other dated July 5, 2017." The minute orders were not marked for identification. The court did not formally admit them into evidence, did not expressly take judicial notice of them, and did not expressly refer to them again. The March 15, 2018 minute order in this case does not refer to either family

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[5] DCFS, S.M., N.M., and a man who appeared at the proceedings were each represented by counsel. B.B. represented himself.

court minute order. The superior court file in this case does not contain a copy of either family court minute order.[6]

S.M.'s counsel commented that B.B.'s statements about visiting, and bonding with, S.M. were not evidence. S.M.'s counsel also commented that due to the delays in the present case, very little information about the visits existed. N.M.'s counsel represented the following: N.M. was disputing B.B.'s statements that he had visited S.M. over 100 times; "[i]t was nowhere close to that." N.M. estimated B.B. had visited S.M. about 10 times. The court later stated: "I'm going to make no finding with respect to any parental relationship between the minor child and [B.B.] He is not a presumed father. He's not a biological father to this child." The court dismissed B.B. from the counts pertaining to him in the first amended petition.

On April 25, 2018, N.M. entered a no contest plea that S.M. came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b). The court ordered S.M. removed from N.M.'s custody and placed in the custody of DCFS.[7]

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[6] This court has the superior court file in this case.

[7] On July 13, 2018, and before B.B. was represented by counsel in this case, B.B., as appellant, filed in this court a purported request for judicial notice of an alleged June 25, 2018 minute order in the Orange County family court case. The "request" was on a piece of paper that simply said, in relevant part, "This is a request for JUDICIAL NOTICE . . . ." The alleged June 25, 2018 minute order was attached. After this court appointed counsel for B.B., his appellate counsel filed on March 15, 2019, in this court a request for judicial notice of the same alleged minute order. We deny B.B.'s in propria persona request because it does not comply with the motion and service

B. *Analysis*

1. *Standard of Review and Applicable Law*

" 'A person who claims entitlement to presumed parent status has the burden of establishing by a preponderance of the evidence the facts supporting the entitlement.' (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 774 . . . .)" (*In re L.L.* (2017) 13 Cal.App.5th 1302, 1310.) "On appeal, we independently interpret statutes and apply the substantial evidence standard in reviewing a juvenile court's finding whether a person is a presumed parent. [Citations.] In so doing, we consider the evidence and all reasonable inferences therefrom in favor of the court's finding and do not reweigh the evidence or credibility of witnesses. [Citations.]." (*Ibid.*)

"There are three types of fathers in juvenile dependency law: presumed, biological, and alleged. [Citation.] A presumed father is a man who meets one or more specified criteria in [Family Code] section 7611. A biological father is a man whose paternity has been established, but who has not shown he is the

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requirements of the California Rules of Court. (See Cal. Rules of Court, rules 8.252(a) & 8.366(a).) We deny both requests because judicial notice is not appropriate. The alleged June 25, 2018 minute order was not before the juvenile court, and facts relevant to a parentage determination should be litigated and decided by the juvenile court, not on appeal. (Cf. *People v. Amador* (2000) 24 Cal.4th 387, 394; see Evid. Code, § 452, subd. (d)(1).) Moreover, once DCFS filed the dependency petition in this case in juvenile court on August 1, 2017, that court had exclusive jurisdiction over this matter. (Cf. *In re Alexander P.* (2016) 4 Cal.App.5th 475, 480, 487-488.) That filing occurred before the issuance of the alleged June 25, 2018 minute order; therefore, it had no legal effect. (Cf. *id.* at p. 488.)

child's presumed father. An alleged father . . . is a man who has not established biological paternity or presumed father status. [Citation.]" (*In re P.A.* (2011) 198 Cal.App.4th 974, 979-980; accord, *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120.) "A fourth category, a 'de facto' father, is also recognized in dependency proceedings . . . ." (*In re D.P.* (2015) 240 Cal.App.4th 689, 695, fn. 4; accord, *In re B.C.* (2012) 205 Cal.App.4th 1306, 1311, fn. 3 ["A 'de facto' parent refers to 'someone such as a stepparent who has, on a day-to-day basis, assumed the role of a parent for a substantial period of time' "].)

"The Uniform Parentage Act . . . ([Fam. Code,] § 7600 et seq.) 'provides the framework by which California courts make paternity determinations. ([Fam. Code,] § 7610, subd. (b).)' [Citation.] [Family Code s]ection 7611 sets forth various rebuttable presumptions for determining a child's natural parent. [Citation.]" (*In re L.L.*, *supra*, 13 Cal.App.5th at pp. 1309-1310.) "[Family Code s]ection 7611 sets forth the ways in which a man can attain the status of presumed father: 'A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with [Family Code s]ection 7540 [(presumption arising from birth of child during marriage)]) or Chapter 3 (commencing with [Family Code s]ection 7570 [(voluntary declaration of paternity)]) . . .' or in specified other circumstances including marriage or attempted marriage to the mother under certain conditions, and [under Family Code section 7611, subdivision (d)] having 'receive[d] the child into his home and openly [held] out the child as his natural child.' " (*Adoption of A.S.* (2012) 212 Cal.App.4th 188, 202, fn. omitted.) As will be seen, the last of these, Family Code section 7611, subdivision (d), is the only statutory means pertinent to this case.

Welfare and Institutions Code section 316.2 states, in relevant part: "(a) At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. . . . The inquiry shall include at least all of the following, as the court deems appropriate: [¶] (1) Whether a judgment of paternity already exists."

California Rules of Court, rule 5.635(d)(1) states, in relevant part: "(d) **Issue raised; inquiry** [¶] If, at any proceeding regarding the child, the issue of parentage is addressed by the court: [¶] (1) The court must ask the parent or the person alleging parentage, and others present, whether any parentage finding has been made, and, if so, what court made it . . . ." Rule 5.635(d)(4) states: "The juvenile court must take judicial notice of the prior determination of parentage." Rule 5.635(e)(1) states: "**No prior determination** [¶] . . . if the court determines through statements of the parties or other evidence, that there has been no prior determination of parentage of the child, the juvenile court must take appropriate steps to make such a determination. [¶] (1) Any alleged father and his counsel must complete and submit *Statement Regarding Parentage (Juvenile)* (form JV-505). . . ."

Family Code section 7636 states, in relevant part: "The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes . . . ."[8]

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[8] "The doctrines of res judicata and collateral estoppel prevent the parties from relitigating [a person's] status if the family court's presumed parent finding had been reduced to a ' " 'final judgment on the merits.' " ' [Citation.] In the case of

2. *Application of the Law to this Case*

As S.M. observes, B.B "has made no efforts to make the transcripts of the Orange County proceedings part of this record." As S.M. also observes, B.B. failed to provide a reporter's transcript of (1) the May 9, 2017 or July 5, 2017 proceedings or (2) the March 1, 2018 hearing in the present case (during which the court denied B.B. visitation pending a parentage determination). B.B. also failed to provide a copy of N.M.'s parentage questionnaire; we note the juvenile court on March 15, 2018, suggested it raised questions as to whether B.B. was the presumed father.

Appellate courts have refused to reach the merits of claims of an appellant who failed to provide a reporter's transcript of a pertinent proceeding or a suitable substitute. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186.) Further, an appellant " 'has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' [Citation.]" (*Id*. at p. 187.) Because of B.B.'s understandable interest that we reach our decision on the merits, and because we have sufficient information to do so despite the absence of a transcript, we now consider the merits of his claims.

We reject B.B.'s claim on the merits for three reasons. First, B.B. presented no proof, either evidence or judicially noticed matter, at the March 15, 2018 proceeding. B.B., representing himself, made unsworn representations; these statements are not evidence. (Cf. *In re Zeth S.* (2003) 31 Cal.4th

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paternity proceedings, this common law doctrine is embodied in [Family Code] section 7636 . . . ." (*In re Alexander P.*, *supra*, 4 Cal.App.5th at p. 490.)

396, 413, fn. 11.) As to the copies of the May 9 and July 5, 2017 minute orders, "[t]he offer of [an] exhibit (in this case a writing) in evidence, is the formal request to the court to make a ruling on the admissibility of the exhibit." (*People v. Thuss* (2003) 107 Cal.App.4th 221, 232.) No one marked the copies as exhibits or offered the copies into evidence. The juvenile court made no ruling on their admissibility. The court did not admit the copies into evidence. (Cf. *id.* at pp. 232-233.)[9] Similarly, no one asked the court to take, and the court did not state it was taking, judicial notice of the copies. The court identified the contents of the copies but said nothing more about them. The superior court file does not contain a copy of the minute orders.

Second, B.B. relies on the statement in the May 9, 2017 family court minute order that "Court grants *joint legal custody* with physical/primary residence to Mother, with parenting time to *Father*." (Italics added.) However, even if this minute order had been admitted into evidence, the word "Father" is ambiguous. As discussed, it has four different meanings in dependency proceedings, three of which do not mean "presumed father." As the juvenile court suggested, the minute order does not reveal the basis for its statement that B.B. was the father, and he may have been referred to as a father and parent simply because his status as such in that stage of the family court proceeding was assumed or not at issue.

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[9] Compare *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 742-743 (documents must be considered in evidence although not formally introduced, where it is apparent the court and offering party understood they were in evidence; principle applied where " 'parties and the court relied on [the] petitioner's exhibits during the extended argument on his motion' ").

Similarly, the minute order indicated the court granted "joint legal custody," but nothing in that minute order indicates the grant was anything other than an interim order based on the assumption that B.B. was a parent. The July 5, 2017 minute order reflects the court ordered "a full child custody evaluation" and appointed a child custody evaluator. Family Code section 3111, subdivision (a), states in part: "In any *contested* proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child." (Italics added.) California Rules of Court, rule 5.220(c)(4) states that a " 'full evaluation' " is a "comprehensive examination of the health, safety, welfare, and best interest of the child." The evaluator may explore in a noncoercive way whether the child has a custodial preference.[10] The full child custody evaluation was superfluous if the court had already made a final joint custody determination.

Keith R. v. *Superior Court* (2009) 174 Cal.App.4th 1047 (*Keith R.*) illuminates the fluid nature of custody orders and the distinction between interim custody orders and a final judicial custody determination. In *Keith R.*, a father filed for divorce in 2006. In 2007, the court granted the parents *joint* legal and physical custody. The court also "appointed a child custody evaluator, who recommended *maintaining* the *current* custody arrangements." (*Id.* at p. 1051, italics added.)

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[10] California Rules of Court, rule 5.220(h)(7) states: "**Ethics** [¶] In performing an evaluation, the child custody evaluator must: [¶] . . . [¶] (7) Not pressure children to state a custodial preference."

In early 2008, the mother made domestic violence allegations against the father. On May 21, 2008, after hearings, the court issued a domestic violence order and directed that the mother have *sole* legal and physical custody of the child. (*Keith R., supra,* 174 Cal.App.4th at pp. 1051-1052.) At the conclusion of custody hearings conducted in 2008 and 2009, the court stated there would be " 'no change in custody *until*' " the father completed an intervention program. (*Id.* at p. 1052, italics added.) On January 27, 2009, the court issued an order finding that the mother had sole legal and physical custody of the child, and permitting the mother to move away with the child. The court noted the father "had failed to show changed circumstances." (*Ibid.*) In a writ petition, the father asked the appellate court to vacate the move-away order. (*Ibid.*)

The *Keith R.* court stated: "When there are competing parental claims to custody, the family court must conduct an adversarial proceeding and ultimately make an award that is in 'the best interest of the child.' [Citation.] . . . [¶] Once there has been *a final judicial determination* regarding the best interest of a child, the dual goals of judicial economy and protecting stable custody arrangement preclude a de novo examination. [Citation.] This rule is based on principles of res judicata. [Citation.] A party seeking to modify a final custody order must show a significant change of circumstances, such as to indicate that a different custody arrangement would be in the child's best interest. [Citation.] And, where sole legal and physical custody has been awarded to one parent after a contested custody dispute, the noncustodial parent is not necessarily entitled to an evidentiary hearing. [Citation.] [¶] *These principles do not apply to interim custody orders, which are not intended to be final*

judgments as to custody."[11] (*Keith R.*, *supra*, 174 Cal.App.4th at p. 1053, italics added.)

We note S.M. was born in April 2017. The May 9, 2017 minute order reflects that on April 10, 2017, B.B. filed a request for an order for custody and visitation, and on May 9, 2017, the court issued the order that "Court grants joint legal custody with physical/primary residence to Mother, with parenting time to Father." If B.B. were correct that the above quoted language constituted a final determination of parentage, it would mean that the court made that determination a mere 30 days after B.B. filed the request and shortly after S.M. was born. We deem it

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[11] The *Keith R.* court later stated: "The court used the wrong legal standard to resolve [the m]other's relocation request. The changed circumstances rule . . . does not apply because there has not yet been *a final judicial custody determination*. Neither the May 21, 2008 nor January 27, 2009 orders constitute such a final order. 'Child custody proceedings usually involve fluid factual circumstances, which often result in disputes that must be resolved *before* any *final* resolution can be reached.' (*Montenegro* [v. *Diaz* (2001)] 26 Cal.4th [249,] 258 [holding that court custody orders do not constitute final judicial custody determination].) At most, *there is only an interim custody order*, which was entered following the domestic violence finding, and which has since been substantially modified. [Citations.]" (*Keith R.*, *supra,* 174 Cal.App.4th at p. 1054, italics added.) We note that on August 1, 2017, B.B.'s counsel characterized the family court action as one in which B.B. was "trying to obtain" custody of S.M.

highly unlikely that the juvenile court made so important a determination in so short a period.[12]

B.B. has failed to demonstrate that the statement in the May 9, 2017 minute order that "Court grants joint legal custody with physical/primary residence to Mother, with parenting time to Father" was a final judicial custody determination or that the statement reflected anything other than an interim custody order. The same reasoning applies to the reference in the minute orders pertaining to visitation rights.

Third, B.B. concedes: "In determining whether there has been a prior determination of parentage, the juvenile court must consider the '*statements of the parties* . . . .' ([Cal.] Rules of Court, rule 5.635(e).)" (Italics added.) During the March 15, 2018 proceeding, the court indicated it had considered B.B.'s JV-505 statement. In it, B.B. indicated he wanted the *juvenile court* to enter a judgment of parentage and find that he was the presumed parent of S.M. The form explained that if he wanted the *juvenile court* to decide if he was the child's parent, he was to fill out the form. He left *blank* that portion of the statement to be completed if parentage of S.M. *already had been established by a court judgment*. We conclude that the trial court reasonably inferred from these facts that there had been no prior court judgment establishing parentage. The court can infer the existence or nonexistence of a legal ruling as to parentage based on the parent's belief about what occurred. (Cal. Rules of Court, rule 5.635(e).)

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[12] We note that during oral argument, S.M.'s counsel said that S.M. was not a party to the Orange County family court proceedings.

As mentioned, we review for substantial evidence a juvenile court's finding on whether a person is a presumed parent. (*In re L.L.*, *supra*, 13 Cal.App.5th at p. 1310.) Employing that standard, we conclude there was insufficient evidence at the March 15, 2018 proceeding that B.B. was a presumed father of S.M. under Family Code section 7611, subdivision (d). It follows that the juvenile court properly found that B.B. was not a presumed father and no parental relationship existed between B.B. and S.M. It also follows that the court properly dismissed B.B. from S.M.'s dependency proceeding.[13]

The policies underlying Family Code section 7611, subdivision (d), support our conclusion. "The purpose of the presumption of parenthood in [Family Code] section 7611[, subdivision] (d) is rooted in the ' " 'strong social policy in favor of preserving [an] *ongoing* [parent] and child relationship.' " [Citation.] The presumption is based on the state's interest in " 'preserving the integrity of the family and legitimate concern for *the welfare of the child*. The state has an " 'interest in preserving and protecting developed parent-child . . . relationships *which give young children social and emotional strength and stability*.' " ' " ' (*R.M. v. T.A.* [(2015)] 233 Cal.App.4th [760,]

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[13] B.B. also claims that evidence before the juvenile court, independent of the alleged evidence of the family court's "prior determination of parentage" as reflected in the May 9, 2017 minute order, showed that that "prior determination of parentage" was correct. We need not decide that claim in light of our earlier conclusion that on March 15, 2018, B.B. failed to present any evidence of the May 9, 2017 minute order or that that minute order reflected a prior determination of parentage.

773 . . . .)" (*County of Orange v. Cole* (2017) 14 Cal.App.5th 504, 509, italics added.)

As mentioned, there was no substantial evidence that B.B. "receive[d] the child into his . . . home and openly [held] out the child as his . . . natural child" within the meaning of Family Code section 7611, subdivision (d). Accordingly, there was no substantial evidence of an ongoing parent and child relationship between B.B. and S.M., a relationship that would advance the welfare of S.M., or a relationship that would give her social and emotional strength and stability. We note that the nature of the relationship between B.B. and S.M. was disputed at the March 15, 2018 proceeding. For example, no evidence was presented, but N.M.'s counsel represented that N.M. was disputing B.B.'s statements that he had visited S.M. over 100 times. Counsel represented that N.M. had estimated that B.B. had visited S.M. about 10 times; if true, this suggested a more limited relationship.

During oral argument, S.M.'s counsel urged that a Family Code section 7611, subdivision (d) determination must be informed by consideration of the "benefit . . . to the child."[14]

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[14] The phrase "benefit to the child" and the similar phrase "best interests of the child" are not found in Family Code section 7611, but similar phrases may be found in other related areas of law. (See Fam. Code, § 7648 [court may deny motion to vacate a judgment establishing parentage if denial is in the "best interest of the child"]; *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31-32 ["In an initial *custody* determination, the trial court has 'the widest discretion to choose a parenting plan that is in the best interest of the child.' (Fam. Code, § 3040, subd. (b).)" italics added]; *Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1051-1052 ["a biological father who is not a presumed father has no

S.M.'s counsel also argued the determination must be informed by the fact that, according to counsel, the relationship between S.M. and B.B. was nascent or even nonexistent.

We agree that because there was no substantial evidence that B.B. was a presumed father, a conclusion that B.B. was the presumed father would disserve the policies underlying Family Code section 7611, subdivision (d), including the policy of advancing " ' "the welfare of the child." ' " (*R.M. v. T.A., supra,* 233 Cal.App.4th at p. 773.)

3. *None of B.B.'s Arguments Compels a Contrary Conclusion*

None of the authorities cited by B.B., or his arguments, compels the conclusion that the family court found that he was a presumed father. B.B. argues it is clear from the May 9, 2017 and July 5, 2017 orders that the court must have made such a finding, because, according to *In re Zacharia D.* (1993) 6 Cal.4th 435 and *In re Baby Girl M.* (1984) 37 Cal.3d 65, "only a presumed father is entitled to custody or parenting time." However, neither of those cases involved the issue of whether such a finding was necessarily inferable from an interim custody order. (*In re Zacharia D., supra,* at p. 439; *In re Baby Girl M., supra,* at

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statutory right to block *adoption* unless he first proves that it is in the child's best interest that the adoption not proceed," italics added].) We have not found, and S.M. has not cited, a published decision holding that a Family Code section 7611, subdivision (d) determination requires evaluation of the "benefit to the child" or "best interests of the child" independent of any such evaluation implicit in a determination that a man "receive[d] the child into his . . . home and openly [held] out the child as his . . . natural child" within the meaning of that subdivision.

pp. 67-68, 75.) Cases are not authority for propositions not considered. (*Loeffler v. Target Corp*. (2014) 58 Cal.4th 1081, 1134.)

B.B. also attempts to invoke Family Code section 7636, Welfare and Institutions Code section 316.2, subdivision (a)(1), and California Rules of Court, rules 5.635(d)(1) and (4), and (e). Family Code section 7636 states that "[t]he judgment or order of the court *determining* the existence or nonexistence of the parent and child relationship is determinative" (italics added), but the section does not by its terms refer to an interim custody order. Moreover, as discussed, Family Code section 7636 embodies the doctrines of res judicata and collateral estoppel. Again, B.B. has made clear that the May 9, 2017 family court minute order did not reflect a final judgment and he is not relying on collateral estoppel (see fn. 2, *ante*).

The court satisfied Welfare and Institutions Code section 316.2, subdivision (a)(1), if, as noted, "[a]t the detention hearing," the court "inquire[d] of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers," and the inquiry included "[w]hether a judgment of paternity already exists." At the detention hearing, N.M. filed a paternity questionnaire form[15] and B.B. filed his JV-505 statement regarding parentage. The latter form asked B.B. if he had already established parentage of S.M. by a court judgment. Similarly, the court complied with California Rules of Court, rule 5.635(d)(1) if, as mentioned, the court "ask[ed] the parent or the person alleging parentage, . . . whether any

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[15] As mentioned, N.M.'s parentage questionnaire is not part of the record.

parentage finding ha[d] been made, and, if so, what court made it . . . ." Again, the JV-505 form's question effectively asked for such information. The court's inquiry was adequate in light of the express terms of the above section and rule.

We also note there is no substantial evidence that a "judgment of paternity" within the meaning of Welfare and Institutions Code section 316.2, subdivision (a)(1), existed, and no substantial evidence that a final (as opposed to an interim) "parentage finding" within the meaning of California Rules of Court, rule 5.635(d)(1) existed. Finally, DNA results established B.B. was not S.M.'s biological father, negating "paternity" within the meaning of Welfare and Institutions Code section 316.2, subdivision (a)(1).

II. B.B. Validly Waived His Right to Counsel

B.B. claims the juvenile court erroneously failed to obtain a waiver of his right to counsel. We disagree.

A. *Pertinent Facts*

On August 1, 2017, DCFS filed the dependency petition, the court appointed counsel for B.B., and the court conducted the detention hearing. The detention report reflects that B.B., who was born in 1960, suffered a 1991 misdemeanor drunk driving conviction, 1997 felony convictions for possessing a controlled substance and possessing a controlled substance for sale, a 1997 misdemeanor conviction for possessing controlled substance paraphernalia, and 2009 misdemeanor convictions for possessing a controlled substance, possessing controlled substance paraphernalia, and being under the influence of a controlled substance.

Court-appointed counsel represented B.B. at August 21 and 28, October 18, and December 21, 2017 proceedings, and at January 9 and 16, and February 2, 2018 proceedings.

On February 2, 2018, B.B. filed a substitution of counsel form. Item 2 on the form stated, "New legal representative." Immediately thereafter was a box to be checked for "Party is representing self," then a box to be checked for "Attorney[.]" B.B. checked the "Attorney" box. The form also stated, inter alia, "NOTICE TO PARTIES WITHOUT ATTORNEYS [¶] A party representing himself . . . may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences." B.B.'s signed and dated consent to substitution appears immediately below the above notice. The February 2, 2018 minute order reflects that the substitution of counsel form was filed on that date, and "[t]he court grants the father's substitution of attorney." The new court-appointed counsel represented B.B. on February 2 and 8, 2018.

On February 16, 2018, B.B. filed another substitution of counsel form; it indicated he would be representing himself. Again, B.B.'s signed and dated consent appears immediately below the notice to parties and admonition that "[f]ailure to take timely and appropriate action in this case may result in serious legal consequences."[16]

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[16] On February 21, 2018, county counsel advised the juvenile court that on February 16, 2018, B.B. had filed a substitution of counsel and was representing himself. County counsel requested that the court ask B.B. at a progress hearing whether he would be representing himself at trial or if he needed

On March 15, 2018, the court called the case and, after the court asked the parties to state their appearances, B.B. indicated he was S.M.'s father, he was representing himself, and he had a witness. The court and parties discussed whether B.B. was a presumed father as previously indicated.

B. *Analysis*

The right of self-representation in a dependency proceeding is statutory, not constitutional. (*In re Angel W.* (2001) 93 Cal.App.4th 1074, 1085.) Welfare and Institutions Code section 317, subdivision (b),[17] "has been interpreted to give a parent in a juvenile dependency case a statutory right to self-representation. [Citation.]" (*In re A.M.* (2008) 164 Cal.App.4th 914, 923.) "Under *Faretta v. California* [(1975)] 422 U.S. [806,] 835 [45 L.Ed.2d [562, 95 S.Ct. 2525]], a criminal defendant's waiver of his or her Sixth Amendment right to counsel should not be accepted unless he or she is 'made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made

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court-appointed counsel. The record does not reflect the outcome of that request.

[17] Welfare and Institutions Code section 317, subdivision (b), states: "When it appears to the court that a parent . . . of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent . . . , unless the court finds that the parent . . . has made a knowing and intelligent waiver of counsel as provided in this section."

with eyes open." [Citation.]' 'The test of a valid waiver of counsel is not whether specific warnings or advisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.' [Citations.]" (*In re Brian R.* (1991) 2 Cal.App.4th 904, 921.) The *Brian R.* court assumed that *Faretta* applied to a parent in a dependency proceeding and concluded the parent at issue in that case validly waived his right to counsel. (*Brian R.*, *supra*, at pp. 921-922.)

In the present case, court-appointed counsel represented B.B. at numerous proceedings from August 1, 2017 to February 16, 2018; he experienced the benefits of representation. B.B. twice completed substitution of counsel forms. Each contained the notice to unrepresented parties and the warning that a failure to take timely and appropriate action in this case could result in serious legal consequences. B.B. signed each form immediately below the notice and warning.

Notwithstanding B.B.'s suggestion to the contrary, he expressed no confusion about the fact that, by the February 16, 2018 substitution form, he was electing to represent himself. He had used that same type of form on February 2, 2018, to obtain new counsel. In both forms, immediately after the phrase "New legal representative," the box entitled "Party is representing self" was adjacent to the box entitled "Attorney." This permits the inferences that when, in the February 2 form, B.B. left unchecked the box for "Party is representing self" and checked the box for "Attorney," he knew he could represent himself, and that, when he completed the February 16 form, he similarly knew he could represent himself and he elected to do so. B.B. appeared at the

March 15, 2018 proceeding, indicated he was representing himself, and brought a witness.

We conclude the record as a whole demonstrates that B.B. understood the disadvantages of self-representation, including the risks and complexities of the particular case, and he validly and knowingly waived his right to counsel. None of the cases cited by B.B. compels a contrary conclusion.[18]

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

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[18] On March 1, 2019, B.B. filed a motion to treat this appeal as a petition for writ of mandate and request to stay the Welfare and Institutions Code section 366.26 hearing. In light of our previous analysis on the merits, we deny B.B.'s motion and request.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.